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11 **UNITED STATES DISTRICT COURT**  
 12 **NORTHERN DISTRICT OF CALIFORNIA**  
 13 **SAN FRANCISCO DIVISION**

14 Jeff Pokorny and Larry Blenn on behalf of ) CASE NO. C 07-00201 SC  
 15 themselves and those similarly situated, )  
 16 Plaintiffs, ) **DECLARATION OF ROBERT**  
 17 v. ) **FITZPATRICK IN SUPPORT OF**  
 18 Quixtar, Inc., et al, ) **PLAINTIFFS' OPPOSITIONS TO (1)**  
 19 Defendants. ) **QUIXTAR'S MOTION TO DISMISS OR**  
 20 ) **STAY AND COMPEL COMPLIANCE WITH**  
 21 ) **DISPUTE RESOLUTION AGREEMENT; (2)**  
 22 ) **BRITT DEFENDANTS' MOTION TO**  
 23 ) **DISMISS AND COMPEL COMPLIANCE**  
 24 ) **WITH DISPUTE RESOLUTION**  
 25 ) **AGREEMENT AND JOINDER IN**  
 26 ) **DEFENDANT QUIXTAR, INC.'S MOTION**  
 27 ) **RE: SAME; AND (3) DEFENDANTS JAMES**  
 28 ) **AND GEORGIA PURYEAR AND WORLD**  
 29 ) **WIDE GROUP, LLC'S MOTION IN**  
 30 ) **SUPPORT OF JOINDER IN QUIXTAR,**  
 31 ) **INC.'S AND BRITT'S MOTION TO DISMISS**  
 32 ) **OR STAY LITIGATION AND COMPEL**  
 33 ) **COMPLIANCE WITH DISPUTE**  
 34 ) **RESOLUTION AGREEMENT**  
 35 )  
 36 ) **CLASS ACTION**  
 37 )  
 38 ) Date: April 27, 2007  
 39 ) Time: 10:00 a.m.  
 40 ) Room: 1, 17th Floor  
 41 ) Judge: Honorable Samuel Conti

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**DECLARATION OF ROBERT FITZPATRICK**

1 I, Robert Fitzpatrick, declare under penalty of perjury that the foregoing is true and correct:

2 1. I write in support of the Plaintiffs' opposition to Defendants' motion to compel compliance  
3 with the Defendants' system of Conciliation and Arbitration.

4 2. I have researched and written about the multi-level marketing business model and the  
5 operations of Amway (now called Quixtar in North America) for more than 12 years. I am the  
6 co-author of the book, *False Profits*, which has been featured and referenced in newspapers,  
7 magazines and in national news shows many times, including an interview on *CBS 60 Minutes*  
8 in a 1999 exposé of the multi-level marketing company, International Heritage Inc.  
International Heritage was sued by the SEC and its founder was criminally prosecuted and  
convicted of fraud and sentenced to 10 years in prison.

9 3. I have served as consultant and expert witness in more than a dozen state and federal court  
10 cases involving multi-level marketing companies, including Amway and Quixtar. In this  
11 capacity, I have been retained by the United States Dept. of Justice and by several state  
12 Attorneys General. I organized and serve as president of the first consumer advocacy and  
13 education organization, Pyramid Scheme Alert, focused on multi-level marketing and pyramid  
14 schemes. I have personally conferred and corresponded with thousands of consumers  
15 worldwide who were solicited to join multi-level marketing companies, many in Amway or  
16 Quixtar. I have been a featured presenter at the annual conferences of the National Association  
17 of Consumer Protection Investigators and the Association of Certified Fraud Specialists on the  
18 subject of distinguishing pyramid schemes from legitimate direct selling companies.

19 4. In 2005, I was invited to speak at an international conference on pyramid schemes attended  
20 by central bankers of five South Asian countries and hosted by the Central Bank of Sri Lanka  
21 in Colombo, Sri Lanka. I assisted the government of Sri Lanka in writing its first anti-pyramid  
22 scheme law. I provided extensive consulting services to the Pan Pacific Direct Selling Institute  
23 in China, which assisted the government of the People's Republic of China in writing that  
24 country's first law to regulate multi-level marketing. I conduct ongoing research and analysis  
in this field.

25 5. I have 25 years experience as a consultant, writer, and analyst of distribution business  
26 models and the relationships between suppliers and independent distributors. I served as  
27 executive director of distributor trade associations in three industries. I have been the featured  
28 speaker at national conferences and provided consulting services to Hewlett Packard, Fuji Film,  
Epson America, among many others. I currently write monthly columns for two national trade  
publications addressing trends and dynamics of wholesale distribution models. I have attended  
annual national conferences of the National Association of Wholesalers and regularly read the  
professional literature in the field.

6. Based on my analysis of Quixtar and the related Kingpin "tools" business of selling and  
distributing books, tapes and seminars to Quixtar recruits (IBOs), I characterize the business  
models of both organizations as pyramid sales schemes that are inherently deceptive, unfair and  
harmful.

7. To reach this conclusion, among other things, I examined the published data from Quixtar

1 regarding its commission payouts in recent years. Applying this data to a statistical sample of  
 2 distributors revealed that 99.4% of the all IBOs earned on average just \$13.41 per week –  
 3 before product purchases, all business expenses and taxes. This average income is far less than  
 4 the costs of the business, resulting in *99% of victims of Quixtar making no net profit*. Fewer  
 5 than 1 person in 10,000 are at the "Diamond and above" levels, the upper ranks of the Quixtar  
 6 chain that every new recruit is urged to aspire to. *See Exhibit 1.*

7  
 8 8. The massive loss rates among Quixtar victims that are revealed in Quixtar's own data are  
 9 the inevitable mathematical result of the endless chain business model. In this model, the  
 10 success of the IBO is based on continuous recruiting of additional distributors (IBOs), who are  
 11 induced to make monthly purchases for their own consumption, rather than on making retail  
 12 sales in the open marketplace. In the recruitment model, only those participants at the top  
 13 levels of the pyramid can earn true profits, since the source of a participant's real income is the  
 14 expenditures of individuals below them on the pyramid, and only a small percentage can be in  
 15 those top positions. The untenable model results in approximately 70% of IBOs quitting  
 16 Quixtar within the first year. The mission of this deceptive business model is to continuously  
 17 enroll losing investors (IBOs) and replace them as they suffer losses and quit the program.

18 9. Millions of ordinary Americans as well as people from many other countries have been  
 19 targets of Quixtar's pyramid recruitment campaign. They are lured by claims and promises of a  
 20 unique and extraordinary new income opportunity. The complex pay plan that concentrates  
 21 commission payment at the top levels of the recruitment chain is seldom understood or even  
 22 known by many new recruits. They are uninformed about the loss rates and dropout rates  
 23 among distributors (IBOs). Virtually none has knowledge of the profits and ownership patterns  
 24 related to the Tools businesses.

25 10. I have reviewed lists of the participants in the Quixtar Conciliation and Arbitration process,  
 26 including the members of the Independent Business Owners Association International and the  
 27 members of the Hearing and Disputes Committee. *See Exhibits 2 & 3.* These materials reveal  
 28 that many of these participants are high level Quixtar recruiters<sup>1</sup>, owners of Kingpin tools  
 companies, and the primary beneficiaries of the Quixtar business model, which the Plaintiffs  
 charge is an illegal pyramid scheme. Among the participants in the Quixtar hierarchy I have  
 learned about in my research of multi-level marketing and who also have official roles in the  
 Conciliation and Arbitration process are Jody Victor, Don Held, Joe Markiewicz, Randy  
 Haugen, Don Wilson and Danny Snipes.

19 Dated: April 6, 2007

20 Signed: 

21 Robert Fitzpatrick

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 27 1 Even without formal discovery, a search of corporate records reveals that at least six out of the eight Hearing  
 28 Panel members own "tools and function" businesses and eight out of the twenty IBOA International Board  
 members own "tools and function" businesses. *See Exhibits 2 and 3.*